

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

5

DECISION

**TOPIC Contract – Ayres Associates/Yahara Software - Internet Database for County and
State Onsite Wastewater Program**

The Environmental Protection Commission is requested to approve an agreement between the Department and Ayres Associates/Yahara Software. This contract is for a six months duration.

The funding for this contract comes from a \$150,000 IowaAccess grant and \$50,000 EPA Stag grant. This contract is for \$173,305 for the program development plus data migration work to be negotiated when we know what counties' needs are. This is estimated at \$25,000 to \$50,000 and will be done as funds are available.

We received six bids for this RFP. The contractor chosen did not submit the low bid, however the selection committee decided that this was the best value based on the contractors qualifications and proposed work plan. The work plan proposed significant involvement with the counties as the program is developed which we believe will gain much needed buy-in and usage by the counties. Involving the counties in the development contributed to the higher cost. The selection committee also felt the selected contractor had a better understanding of the project and will produce a more acceptable product.

The contract will include a seminar to be given this fall for private consulting engineers and Departmental staff reviewing the development and use of the manuals.

Brent Parker
Environmental Engineer Senior
Wastewater Operations Section
Water Quality Bureau
Environmental Services Division

IOWA DEPARTMENT OF NATURAL RESOURCES
AGREEMENT 2006-7137-01
with
QUALITY CONSULTING, INC.

**Agreement Title: Implementation of an IT Enterprise
Onsite Wastewater System Database**

Agreement Amount: \$173,305

Time of Performance: April 1, 2007 to September 15, 2007

Contractor:

AYRES ASSOCIATES, INC.
Project Officer: Richard Otis
Address: 1802 Pankratz Street
Madison, WI 53704
Phone: 608-233-5458
Fax: 608-443-1250
e-mail: OtisR@AyresAsdsociates.com

Agency:

IOWA DEPARTMENT OF NATURAL RESOURCES
Project Officer: Brent Parker
401 SW 7th Street, Suite M
Des Moines, IA 50309-4611
515-725-0337
515-725-0348
brent.parker@dnr.state.ia.us

Submit Original Invoice and two copies to:

Iowa Department of Natural Resources
401 SW 7th Street
Des Moines, IA 50309-4611
ATTN: Brent Parker

Issue Payment to:

Richard Otis
1802 Pankratz Street
Madison, WI 53704

TABLE OF CONTENTS

Section 1	Identity of Parties.....	3
Section2	Purpose.....	3
Section 3	Duration of Contract.....	3
Section 4	Scope of Services.....	3
Section 5	Project Timeline.....	4
Section 6	Compensation.....	4
Section 7	Termination	5
Section 8	Confidential Information.....	8
Section 9	Indemnification.....	9
Section 10	Insurance.....	10
Section 11	Project Management and Reporting.....	11
Section 12	Intellectual Property, Patent and Copyright.....	13
Section 13	Warranties.....	13
Section 14	Contract Administration.....	14
Section 15	Execution.....	19

SECTION 1. IDENTITY OF PARTIES

1.1 The Iowa Department of Natural Resources (hereafter referred to as the Department) is authorized to enter into this contract. The Department's address is 401 SW 7th Street, Suite M., Des Moines, IA 50309-4611.

1.2 Ayers Associates, Inc. (hereafter referred to as the Contractor) is organized under the laws of the state of Iowa and authorized to do business in the state of Iowa. The Contractor's address is 1802 Pankratz Street, Madison, WI 53704.

SECTION 2. PURPOSE

The parties have entered into this Contract for the purpose of retaining the Contractor to do the requirements analysis, detail design, development, testing, documenting and implementation of a state-wide Onsite Wastewater Treatment Systems database..

SECTION 3. DURATION OF CONTRACT

The term of this Contract shall be April 1, 2007, through September 15, 2007, unless terminated earlier in accordance with the Termination section of this Contract.

SECTION 4. SCOPE OF SERVICES

4.1 Scope of Services. The Contractor shall provide the following services in accordance with the defined performance criteria as set forth below as referenced to the Request for Proposal and the Bid Proposal.

This scope of service is for an internet-based database to track and manage information related to the installation, operation and management of private onsite domestic sewage treatment systems in the state of Iowa. The selected contractor shall work with designated Department staff to define and document the business requirements, design, develop, test and deploy the system, develop technical system documentation and operational manuals, and provide user and technical training. The contractor shall assist counties in migrating existing data from county databases into the new statewide database. The plan for accomplishing these deliverables must be detailed in the work plan.

4.2 Programming Language and Platforms

The platform is described in the Onsite Wastewater Treatment Systems Database – Business Plan. The database should be developed using Microsoft SQL Server 2000 and the web-based application should be created in a .NET 2.0 framework. The entire application shall be written with VB.Net using Visual Studio 2005. Reports should be developed using SQL Server Reporting Services 2005 unless another form of report development is accepted by the Department. The various user roles shall be defined with only one account accessing the SQL Server. Iowa Department of Natural Resources (Department) employees shall have administrative access as required to manage and maintain the database.

The Department is preparing **Database and Application Development Guidelines** addressing hardware and software to ensure uniformity of development within the Department. Drafts of these guidelines are included at the end of this RFP.

4.3 Business Plan Requirements

An integral part of this RFP is the document “Onsite Wastewater Treatment Systems Database – Business Plan” (the Business Plan) prepared by Ayers Associates and Yahara Software completed December 14, 2005. Some additional features have been identified since the business plan was developed and are described within this document.

This RFP shall be for only the first phase of the development of this program and shall describe the portions to be developed at this stage. Primarily this shall include everything defined in the "Approach" section on page 5-6 of the business plan as phase 1 and phase 2. It shall include deployment and role-out to all 99 counties initially as a stand-alone product for new construction and incorporate existing data as county data migration progresses. Therefore, the final product must be developed in a manner that is easily expandable and enhanced. Ease of Operability shall be demonstrated in deliverables prior to acceptance for each of the user groups outlined in the Business Plan.

Work described in the business plan as phase 3 shall be developed later under a separate RFP. Since the Business Plan was created an addition program was added to the Department responsibilities. Tracking of septic tank pumping by licensed contractors shall be required and the deliverables are described within this document.

4.4 Functional Requirements

This application system shall track the permitting, construction and inspection of onsite sewer systems by each of the 99 counties in Iowa. It shall make this information available in real time to the Department staff. It shall provide a system for inventory and management of NPDES program required of all onsite wastewater systems discharging effluent to the surface. It shall track the installation, effluent monitoring and management requirements of systems installed under the Onsite Wastewater Systems Assistance Program.

The Department also operates a septic tank pumper licensing program. This system shall track these licensed contractors, equipment and disposal sites.

The proposed database is intended to track all of these functions. There shall be an internet hosted database on a state server that all of the counties shall use to track their onsite wastewater processes. A few counties may load information into this database in batch, but the vast majority shall enter the information directly in the individual fields. There is intent to electronically migrate any information from those counties that presently are using electronic data storage.

The data shall be available to the counties to help them track and manage these onsite wastewater systems. It shall also allow the Department to better audit the counties' onsite wastewater programs and effectiveness as well as manage the states related programs. In the short term the counties shall have better access to the information as needed by the individual homeowner. Ultimately there shall be access to the general public as the system matures.

4.5 Non Functional Requirements

See the Business Plan and Page A-5 for Enhancibility, Portability, Reusability, Performance/responsiveness, and Adaptiveness.

4.6 Existing Data Migration and Compatibility

This contract includes only the development of a standard integration and migration protocol. Actual migration of existing county data will be performed under a separate contract negotiated after information is obtained as to what actual data is require to be transferred from each county. Other compatibilities mentioned below are included in this contract.

The contractor shall develop integration and migration protocol for existing county data as described in the Business Plan. A very few counties may desire to continue to batch load data into this system from operating databases; however, this shall be allowed and provided for. The existing electronic data in each county shall be migrated into the system. The contract may bid on a per county basis for this transfer.

This database shall be compatible with the Department's One Stop project which includes the Environmental Facilities Database (EFD) and associated website called Facility Explorer (<http://facilityexplorer.iowadnr.com>). EFD is a data warehouse that brings together core environmental information in one place for easy access by DNR staff and the public. Data from different environmental programs are linked based on the facility site location. Refer to Appendix C -- EFD Logical Data Elements.

The onsite wastewater database shall exchange data with the One Stop database, a data warehouse designed to allow access to all the Iowa environmental data for a facility. The structure of the One Stop database is based on EPA's Facility Identification Data Standard.

The onsite wastewater database shall be linked to the Facility Explorer to establish the site location. A routine shall be developed so that the Latitude and Longitude may be obtained from the Facility Explorer mapping program or by using GPS equipment and checked against the Facility Explorer.

The contractor shall adhere to Department of Natural Resources and Department of Administrative Services Information Technology Enterprise and Information Security Office policies, standards and procedures.

4.7 Data Features and Elements

The database features as identified in the Business Plan to be developed under this RFP are:

Phase I: Basic System Design and Development, Information Entry and reporting

A. Database design and application development of basic wastewater system information including but not limited to:

- a. Property Description
- b. Site and Soil Evaluation
- c. Wastewater Characteristics
- d. Septic System Design
- e. Septic System Construction
- f. Septic System Permitting
- g. Septic Tank Pumper Tracking (not included in Ayers business plan)
 - i. Track pumper licensing, business location, trucks
 - ii. Land spreading sites and application volumes
 - iii. Publicly Operated Treatment Works where septage is taken
- h. Septic System Monitoring
 - i. Track and monitor effluent testing and maintenance contacts
 - ii. Allow setting up a monitoring schedule to alert user that monitoring event is due
- i. Reporting
 - i. IDNR report of number, type, and status of septic systems
 - ii. IDNR NOI report for surface discharging septic systems
 - iii. IDNR Loan Program
 - iv. IDNR Septic Tank Pumper licensing and land application
 - v. Ability to generate maintenance standardized "reminder letters" to owners, e.g. monitoring, maintenance contracts, pumping, testing, etc.

B. Migration of existing county electronic information

C. Deployment to the internet web server of the Iowa Information Technology Enterprise

The desirable features noted as Phase 3 on pages A3 – A5 of the Business Plan are not included in this RFP and shall be develop in a later phase.

The data elements are spelled out starting on page A-5 of the Business Plan. All data elements marked as "not required" shall not be incorporated into this phase of the project. Potential sample screen shots are included at the end of the business plan. Flow charts and table formations shall be developed by the contractor as a part of this RFP.

Not mentioned in the Business Plan but included in this RFP is the development of a septic tank site location system using an interactive mapping program developed by the Department named Facilities Manager. Links shall be made to this mapping program to bring in the latitude, longitude, x and y UTM coordinates and Public Land Survey description. This shall be checked against and/or used as an alternative to the latitude and longitude provided by the data entry personnel.

4.8 Stakeholders Committee

The Contractor shall convene a stakeholders committee consisting of county sanitarians and members of the Iowa Onsite WasteWater Association. This committee shall meet with the contractor early in the process to verify business plan expectations and throughout the process to verify the results of contractor tasks leading to the deliverables for this contract. The contractor shall meet weekly with the Department to review progress, report status and resolve issues concerning the project.

The stakeholders committee shall be responsible for the following:

- Provide feedback in the requirements for the development of the database system design
- Help assure inclusion of the necessary components of the database system
- Provide information about existing database systems
- Approve the final plan for the development of the overall system to be utilized by the counties
- Provide user testing of prototype

4.9 Source Code and Testing Deliverables

The contractor shall provide the source code for the system as well as documentation for all segments of the code or system. The source code shall be the property of the Department of Natural Resources.

The system shall be thoroughly unit and system tested before any components are considered acceptable. Changes shall be documented to ensure all potential conflicts have been tested. No code shall be moved to the production environment without appropriate user acceptance (testing) and sign off.

Information Technology Bureau staff in the Department shall be involved in the planning for deployment to the production environment. Technical documentation for the management and maintenance of the system shall be reviewed with Information Technology Bureau staff and signed off before being accepted as a deliverable under this contract.

4.10 DOCUMENTATION/TRAINING

1. The vendor shall prepare documentation for system solutions, utilizing formats such as: UML diagrams, Functional Specifications documents, Assessments/Approach, and Mapping documents (XML). Documentation includes, but is not limited to:
 - System work flows and processes related to the database
 - Web services (and other reusable functionality)
 - Data fields and data requirements
 - Database design
 - Specific transactional detail for new or changed processing methods
 - Changes to tables
 - Examples of reports (may be included in business requirements)
 - Screen mock-ups
 - Calculations
 - Impacts to upstream and downstream systems
 - Changes to operating procedures
 - Criteria for test plans
 - Conversion considerations
2. The vendor shall provide training for technical and non-technical staff. An online help system for use by Department and county employees shall be implemented. A user manual shall be distributed to county employees, service providers, the Department and other users. Training shall be provided to Information Technology Bureau staff on the system components, process flows etc, in order to support the system in the future.

SECTION 5. PROJECT TIMELINE

Work will begin, with an initial project meeting, no later than April 1, 2007 and be completed by September 15, 2007.

SECTION 6. COMPENSATION

6.1 Pricing. The Contractor will be paid no more than \$96,000 for the services described in the Scope of Services and detailed below.

	Description		Price	Date Due
	Project Component	Deliverables		
<i>1</i>	Project Definition	Acceptance Documents	\$32,202	April 27, 2007
<i>2</i>	Release 1	Updated Risk Document Release Notes Stories for Release 2	\$26,835	May 25, 2007
<i>3</i>	Release 2	Updated Risk Document Release Notes Issue Resolution for Release 1 Acceptance of Release 1 Stories for Release 3 Deployment Document	\$26,322	June 22, 2007
<i>4</i>	Release 3	Updated Risk Document Release Notes Issue Resolution for Release 2 Acceptance of Release 2 Stories for Release 4	\$27,672	July 20, 2007
<i>5</i>	Release 4	Updated Risk Document Issue Resolution for Release 3 Acceptance of Release 3 Stories for Acceptance Testing	\$34,182	August 17, 2007
<i>6</i>	Acceptance	Issue Resolution for Release 4 Acceptance of Release 4 Training Complete Acceptance Testing Complete Acceptance Document Signed Project Closure Meeting	\$26,092	September 14, 2007
	TOTAL:		\$173,305	

6.2 Post Production Support. Contractor will work with the Department to ensure application supports compliance with all specifications and warranty the program for one year as noted in the contractor's proposal.

6.3 Billings. The Contractor shall submit, on a monthly basis, an invoice for services rendered in accordance with this Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The Department shall pay all approved invoices in arrears and in conformance with Iowa Code section 421.40 and 701 Iowa Administrative Code 201.1(2). The Department may pay in less than sixty (60) days, as provided in Iowa Code section 421.40. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 421.40.

Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any goods or services provided by or on behalf of the Contractor under this Contract. The

Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under this Contract.

6.4 Delay of Payment Due to Contractor's Failure. If the Department in good faith determines that the Contractor has failed to perform or deliver any service or product as required by this Contract, the Contractor shall not be entitled to any compensation under this Contract until such service or product is performed or delivered. In this event, the Department may withhold that portion of the Contractor's compensation, which represents payment for service or product that was not performed or delivered.

6.5 Set-Off Against Sums Owed by the Contractor. In the event that Contractor owes the State any sum under the terms of this Contract, any other Contract, pursuant to any judgment, or pursuant to any lack the State may set off the sum owed to the State against any sum owed by the State to the Contractor in the State's sole discretion, unless otherwise required by law. The Contractor agrees that this provision constitutes proper and timely notice under the law of setoff.

SECTION 7. TERMINATION

7.1 Immediate Termination by the Department. The Department may terminate this Contract for any of the following reasons effective immediately without advance notice:

7.1.1 In the event the Contractor is required to be certified or licensed as a condition precedent to providing services, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

7.1.2 The Department determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, a client's life, health or safety to be jeopardized;

7.1.3 The Contractor fails to comply with confidentiality laws or provisions;

7.1.4 The Contractor furnished any statement, representation or certification in connection with this Contract or the RFP which is materially false, deceptive, incorrect or incomplete.

7.2 Termination for Cause. The occurrence of or any one or more of the following events shall constitute cause for the Department to declare the Contractor in default of its obligations under this Contract.

7.2.1 The Contractor fails to perform, to the Department's satisfaction, any material requirement of this Contract or is in violation of a material provision of this Contract, including, but without limitation, the express warranties made by the Contractor;

7.2.2 The Department determines that satisfactory performance of this Contract is substantially endangered or that a default is likely to occur;

7.2.3 The Contractor fails to make substantial and timely progress toward performance of the Contract;

7.2.4 The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the Department reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

7.2.5 The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of this Contract; or

7.2.6 The Contractor has engaged in conduct that has or may expose the Department to liability, as determined in the Department's sole discretion.

7.2.7 The Contractor has infringed any patent, trademark, copyright, traddress or any other intellectual property right.

7.3 Notice of Default. If there is a default event caused by the Contractor, the Department shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the Department's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, the Department may either:

7.3.1 Immediately terminate the Contract without additional written notice; or,

7.3.2 Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

7.4 Termination Upon Notice. Following 30 days written notice, the Department may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for services provided under this Contract to the Department up to and including the date of termination.

7.5 Termination Due to Lack of Funds or Change in Law. The Department shall have the right to terminate this Contract without penalty by giving sixty (60) days written notice to the Contractor as a result of any of the following:

7.5.1 Adequate funds are not appropriated or granted to allow the Department to operate as required and to fulfill its obligations under this Contract;

7.5.2 Funds are de-appropriated or not allocated or if funds needed by the Department, at the Department's sole discretion, are insufficient for any reason;

7.5.3 The Department's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Department;

7.5.4 The Department's duties are substantially modified.

7.6 Remedies of the Contractor in Event of Termination by the Department. In the event of termination of this Contract for any reason by the Department, the Department shall pay only those amounts, if any, due and owing to the Contractor for services actually rendered up to and including the date of termination of the Contract and for which the Department is obligated to pay pursuant to this Contract. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the Department under this Contract in the event of termination. However, the Department shall not be liable for any of the following costs:

7.6.1 The payment of unemployment compensation to the Contractor's employees;

7.6.2 The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;

7.6.3 Any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;

7.6.4 Any taxes that may be owed by the Contractor in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

7.7 The Contractor's Termination Duties. The Contractor upon receipt of notice of termination or upon request of the Department, shall:

7.7.1 Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, any other matters the Department may require.

7.7.2 Immediately cease using and return to the Department any personal property or materials, whether tangible or intangible, provided by the Department to the Contractor.

7.7.3 Comply with the Department's instructions for the timely transfer of any active files and work product produced by the Contractor under this Contract.

7.7.4 Cooperate in good faith with the Department, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor.

7.7.5 Immediately return to the Department any payments made by the Department for services that were not rendered by the Contractor.

SECTION 8. CONFIDENTIAL INFORMATION

8.1 Access to Confidential Data. The Contractor's employees, agents and subcontractors may have access to confidential data maintained by the Department to the extent necessary to carry out its responsibilities under the Contract. The Contractor shall presume that all information received pursuant to this Contract is confidential unless otherwise designated by the Department. The Contractor shall provide to the Department a written description of its policies and procedures to safeguard confidential information. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract. The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Contract. The private or confidential data shall remain the property of the Department at all times.

8.2 No Dissemination of Confidential Data. No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the Department, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the Department. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of the Department.

8.3 Subpoena. In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the Department and cooperate with the Department in any lawful effort to protect the confidential information.

8.4 Reporting of Unauthorized Disclosure. The Contractor shall immediately report to the Department any unauthorized disclosure of confidential information.

8.5 Survives Termination. The Contractor's obligation under this Contract shall survive termination of this Contract.

SECTION 9. INDEMNIFICATION

9.1 By the Contractor. The Contractor agrees to indemnify and hold harmless the State of Iowa and the Department, its officers, employees and agents appointed and elected and volunteers from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the State of Iowa or the Department, related to or arising from:

9.1.1 Any breach of this Contract;

9.1.2 Any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor;

9.1.3 The Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor;

9.1.4 Any failure by the Contractor to comply with the compliance with the Law provision of this Contract;

9.1.5 Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Iowa;

9.1.6 Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or

9.1.7 Any failure by the Contractor to adhere to the confidentiality provisions of this Contract.

9.2 Indemnification by the Department

9.2.1 The Department shall, only to the extent consistent with Article VII, Section 1 of the Iowa Constitution and Iowa Code Chapter 669, indemnify and hold harmless the Contractor from and against any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments arising directly out of the negligence or wrongful acts or omissions of any employee of the Department while acting within the scope of the employee's office of employment in connection with the performance of this Contract.

9.2.2 At the option of the Department, the Contractor shall be represented by the Attorney General of the State or special counsel retained by the State or the Attorney General of the State with respect to any litigation brought by or against the Department or such persons with respect to any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments to which such persons may be subject and to which they are entitled to be indemnified hereunder.

9.2.3 If the Department makes any indemnity payments pursuant to this Section and the person to or on behalf of whom such payments are made thereafter collects any of such amounts from others, that person shall promptly repay such amounts to the Department, without interest.

9.3 Survives Termination. Indemnification obligation of the parties shall survive termination of this Contract.

SECTION 10. INSURANCE

10.1 Insurance Requirements. The Contractor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Contractor's expense, insurance covering its work during the entire term of this Contract and any extensions or renewals. The Contractor's insurance shall, among other things, be occurrence based and shall insure against any loss or damage resulting from or related to the Contractor's performance of this Contract regardless of the date the claim is filed or expiration of the policy. The State of Iowa and the Department shall be named as additional insureds or loss payees, or the Contractor shall obtain an endorsement to the same effect, as applicable.

10.2 Types and Amounts of Insurance Required. Unless otherwise requested by the Department in writing, the Contractor shall cause to be issued the insurance coverages set forth below:

TYPE OF INSURANCE	LIMIT	AMOUNT
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$2 Million
	Product/Completed Operations Aggregate	\$1 Million
	Personal Injury	\$1 Million
	Each Occurrence	\$1 Million

TYPE OF INSURANCE	LIMIT	AMOUNT
Automobile Liability (including any auto, hired autos, and non-owned autos)	Combined Single Limit	\$1 Million
Excess Liability, Umbrella Form	Each Occurrence	\$1 Million

TYPE OF INSURANCE	LIMIT	AMOUNT
	Aggregate	\$1 Million
Workers Compensation and Employer Liability	As required by Iowa law	As required by Iowa law
Property Damage	Each Occurrence	\$1 Million
	Aggregate	\$1 Million

10.3 Certificates of Coverage. All insurance policies required by this Contract shall remain in full force and effect during the entire term of this Contract and any extensions or renewals thereof and shall not be canceled or amended except with the advance written approval of the Department. The Contractor shall submit certificates of insurance, which indicate coverage and notice provisions as required by this Contract, to the Department upon execution of this Contract. The certificates shall be subject to approval by the Department. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days' prior written notice to the Department. Approval of the insurance certificates by the Department shall not relieve the Contractor of any obligation under this Contract.

10.4 Claims Provision. All insurance policies required by this Agreement must provide coverage for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy.

10.5 No Limitation of Liability. Acceptance of the insurance certificates by DNR shall not act to relieve Contractor of any obligation under this Agreement. All insurance policies and certificates shall be issued only by companies authorized to transact business in the State of Iowa. It shall be the responsibility of Contractor to keep the respective insurance policies and coverages current and in force during the life of this Agreement.

10.6 Warranty. Contractor warrants that it has examined its insurance coverage to determine whether DNR and the State can be named as additional insureds without creating an adverse effect on Contractor's coverage.

10.7 Waiver of Subrogation Rights. Contractor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against DNR or the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to DNR.

SECTION 11. PROJECT MANAGEMENT AND REPORTING

11.1 Project Manager. At the time of execution of this Contract, each party shall designate, in writing, a Project Manager to serve until the expiration of this Contract or the designation of a substitute Project Manager. During the term of this Contract, each Project Manager shall be available to meet weekly, unless otherwise mutually agreed, to review and plan the services being provided under this Contract. At the time of execution of this Contract, Contractor designates Robert Van Abel to be the Contractor Project Manager. At the time of execution of this Contract, the Department designates Russ Tell as the Department Project Manager.

11.2 Review Meetings. During the review meetings, the Project Managers shall discuss progress made by the Contractor in the performance of this Contract. Each party shall provide a status report, as desired by a Project Manager, listing any problem or concern encountered since the last meeting. Records of such reports and other communications issued in writing during the course of Contract performance shall be maintained by each party.

11.3 Modification to Scope of Services. The Department may at any time request a modification to the Scope of Services using a Change Order. The following procedures for a change order shall be followed:

11.3.1 The Department shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Services.

11.3.2 The Contractor shall submit to the Department a time and cost estimate for the requested Change Order within five (5) business days of receiving the Change Order Request.

11.3.3 If the Department accepts the estimate presented by the Contractor within five (5) business days of receiving the Contractor's response, the Contractor shall perform the modified services subject to the time

and cost estimates included in the Contractor response. The Contractor's performance and the modified services shall be governed by the terms and conditions of this Contract.

11.4 Change Order Procedure. The Department may at any time request a modification to the Scope of Services using a Change Order. The following procedures for a change order shall be followed:

11.4.1 Written Request. The Department shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Services.

11.4.2 The Contractor's Response. The Contractor shall submit to the Department a time and cost estimate for the requested Change Order within five (5) business days of receiving the Change Order Request.

11.4.3 Acceptance of the Contractor Estimate. If the Department accepts the estimate presented by the Contractor within five (5) business days of receiving the Contractor's response, the Contractor shall perform the modified services subject to the time and cost estimates included in the Contractor response. The Contractor's performance and the modified services shall be governed by the terms and conditions of this Contract.

11.4.4 Adjustment to Compensation. The parties acknowledge that a Change Order for this Contract may or may not entitle the Contractor to an equitable adjustment in the Contractor's compensation or the performance deadlines under this Contract.

SECTION 12. INTELLECTUAL PROPERTY, PATENT AND COPYRIGHT

12.1 Works Made for Hire. Contractor agrees that all patents, copyrights, inventions, trade secrets and all other intellectual property rights and proprietary rights therein or related thereto, shall become and remain the sole and exclusive property of DNR, with the exceptions specifically stated herein in section 12.4. Contractor hereby irrevocably transfers, assigns and conveys all right, title and interest in all intellectual property rights and proprietary rights therein or related thereto to DNR. Contractor represents and warrants that DNR shall acquire good and clear title to such materials, free from any claims, liens, security interests, encumbrances or other rights or interests of Contractor or of any Third Party. All information, reports, studies, object or source codes, flow charts, diagrams, and other tangible and intangible material of any nature whatsoever produced by or as a result of any other services and all copies of any of the foregoing shall be the sole and exclusive property of the Department, and all such material and all copies shall be deemed "works made for hire" of which the Department shall be deemed the author.

12.2 Source Codes. The Department shall have the right to audit the source codes for any software developed by the vendor and used in connection with this Contract. The source codes shall be deposited in a location mutually agreeable to the parties. The source codes for the software shall be audited at least once annually during the term of this Contract and any extension thereof.

12.3 Title to Property. To the extent that the materials are not deemed "works made for hire", the vendor hereby irrevocably grants, assigns, transfers, and sets over to the Department all legal and equitable right, title and interest of any kind, nature or description in and to the materials and the vendor shall be entitled to make absolutely no use of any of the materials except as may be expressly permitted in this Contract.

12.4 Preexisting Intellectual Property and Libraries. All right, title, and interest in and to any intellectual property (including, without limitation, patents, copyrights, trademarks, software code, software libraries, programming tools, or trade secrets) of Contractor's (or its employees, contractors, agents or personnel) that it owns or controls prior to the execution of this Agreement, is reserved by Contractor. This Agreement shall not be interpreted to transfer to the Department any rights therein except as follows.

Contractor may incorporate into the services provided to the Department computer code (hereafter referred to as "Libraries"). The Libraries are custom computer programs developed by Contractor for use by its consultants in multiple development projects. The Contractor represents and warrants that these libraries are pre-existing to this contract and were not developed using any Department funding. It is understood by both parties that the following Libraries may form an integral part of the completed services:

1. Log-in;

2. Authentication/Security;
3. Calendar Controls;
4. Page-to-page Navigation;
5. User Interface Controls;
6. Error Handling;
7. Data Abstraction.

Right, title, and interest in and to the above listed Libraries of Contractor's are reserved by Contractor.

The Department is hereby granted a non-exclusive perpetual license to use, modify, and distribute Libraries and all other computer programming as required in the sale, implementation, and support of services provided to the Client.

SECTION 13. WARRANTIES

13.1 Construction of Warranties Expressed in this Contract with Warranties Implied by Law. All warranties made by the Contractor in all provisions of this Contract and the Proposal by the Contractor, whether or not this Contract specifically denominates the Contractor's promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the Department, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Contractor. The provisions of this Section apply during the term of this Contract and any extensions or renewals thereof.

13.2 Concepts, Materials, and Works Produced. Contractor represents and warrants that all the concepts, materials and Works produced, or provided to the Department pursuant to the terms of this Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and Works. The Contractor represents and warrants that the concepts, materials and Works and the Department's use of same and the exercise by the Department of the rights granted by this Contract shall not infringe upon any other work, other than material provided by the Contractor to the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the software, the materials owned by the Contractor and any other materials, Works and methodologies used in connection with providing the services contemplated by this Contract.

13.3 Professional Practices. The Contractor represents and warrants that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

13.4 Conformity with Contractual Requirements. The Contractor represents and warrants that the Works will appear and operate in conformance with the terms and conditions of this Contract.

13.5 Authority to Enter into Contract. The Contractor represents and warrants that it has full authority to enter into this Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the Department.

13.6 Obligations Owed to Third Parties. The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the

Contractor pursuant to this Contract are or will be fully satisfied by the Contractor so that the Department will not have any obligations with respect thereto.

13.7 Title to Property. The Contractor represents and warrants that title to any property assigned, conveyed or licensed to the Department is good and that transfer of title or license to the Department is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.

13.8 Industry Standards. The Contractor represents and expressly warrants that all aspects of the goods and services provided or used by it shall conform to the standards in the Information Technology industry in the performance of this Contract.

13.9 Technology Updates. The Contractor represents warrants that it shall continually use and integrate the most current and up-to-date technology commercially available.

SECTION 14. CONTRACT ADMINISTRATION

14.1 Independent Contractor. The status of the Contractor shall be that of an independent contractor. The Contractor, its employees, agents and any subcontractors performing under this Contract are not employees or agents of the State of Iowa or any Department, division or department of the state. Neither the Contractor nor its employees shall be considered employees of the Department or the State of Iowa for federal or state tax purposes. The Department will not withhold taxes on behalf of the Contractor (unless required by law).

14.2 Incorporation of Documents. The RFP, and amendments and written responses to bidders' questions (collectively RFP) and the Contractor's Proposal submitted in response to the RFP, form the Contract between the Contractor and the Department and are incorporated herein by reference. The parties are obligated to perform all services described in the RFP and Proposal unless the Contract specifically directs otherwise.

14.3 Order of Priority. In the event of a conflict between the Contract, the RFP and the Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Contract; (2) the RFP; (3) Proposal.

14.4 Compliance with the Law. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or suppliers. The Contractor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract.

14.5 Amendments. This Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to this Contract must be in writing and fully executed by the parties.

14.6 Third Party Beneficiaries. There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the State, the Department and the Contractor.

14.7 Choice of Law and Forum. The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of Iowa law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, the exclusive jurisdiction for the proceeding shall be brought in Polk County District Court for the State of Iowa, Des Moines, Iowa. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the Department or the State of Iowa.

14.8 Assignment and Delegation. This Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment.

14.9 Use of Third Parties. The Department acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this Contract. All subcontracts shall be subject to prior approval by the Department. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all services performed under this Contract. All restrictions, obligations and responsibilities of the Contractor

under this Contract shall also apply to the subcontractors. The Department shall have the right to request the removal of a subcontractor from the Contract for good cause.

14.10 Integration. This Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in this Contract.

14.11 Headings or Captions. The paragraph headings or captions used in this Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

14.12 Not a Joint Venture. Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Contract.

14.13 Joint and Several Liability. If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default of activities and obligations.

14.14 Supersedes Former Contracts or Agreements. This Contract supersedes all prior Contracts or Agreements between the Department and the Contractor for the services provided in connection with this Contract.

14.15 Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the Department and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

14.16 Notice

14.16.1 Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth as follows:

If to the Department: Brent Parker
Project Manager
401 SW 7th Street, Suite M
Des Moines, IA 50309-4611

If to the Contractor: Richard Otis
Ayres Associates Inc
1802 Pankratz Street
Madison, WI 53704

14.16.2 Each such notice shall be deemed to have been provided:

14.16.2.1 At the time it is actually received; or,

14.16.2.2 Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

14.16.2.3 Within five (5) days after it is deposited the U.S. Mail in the case of registered U.S. Mail.

14.16.3 From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

14.17 Cumulative Rights. The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

14.18 Severability. If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.

14.19 Time is of the Essence. Time is of the essence with respect to the performance of the terms of this Contract.

14.20 Authorization. Each party to this Contract represents and warrants to the other parties that:

14.20.1 It has the right, power and authority to enter into and perform its obligations under this Contract.

14.20.2 It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Contract, and this Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

14.21 Successors in Interest. All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

14.22 Record Retention and Access. The Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the Department throughout the term of this Contract for a period of at least three (3) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records.

14.23 Solicitation. The Contractor warrants that no person or selling Department has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

14.24 Obligations Beyond Contract Term. This Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Contract. All obligations of the Department and the Contractor incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this Contract.

14.25 Counterparts. The parties agree that this Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

14.26 Additional Provisions. The parties agree that if an Addendum, Rider or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

14.27 Further Assurances and Corrective Instruments. The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Contract.

14.28 Delay or Impossibility of Performance. The Contractor shall be in default under this Contract if performance is delayed or made impossible by an act of God, flood, fire or similar events. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the Contractor. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of this Contract.

14.29 Conflict of interest clause. During the term of this Agreement, Contractor shall not provide services that would create a conflict of interest with the Contractor's duties set out in this Agreement. In determining whether a particular activity creates an unacceptable conflict of interest, situations in which an unacceptable conflict shall be deemed to exist shall include, but not to be limited to, any of the following:

a. The activity involves the use of the state's or DNR's time, facilities, equipment, and supplies or other evidences of employment for purposes other than the performance of Contractor's obligations under this Agreement.

b. The activity involves the receipt of, promise of, or acceptance of money or other consideration by Contractor from anyone other than the state or DNR for the performance of any acts that Contractor is required or expected to perform as a part of Contractor's performance under this Agreement.

c. The outside employment or activity is subject to the official control, inspection, review, audit, or enforcement authority of the DNR.

If the activity creating a conflict of interest is in progress when the term of this Agreement begins or is described in paragraph "a" or "b", Contractor shall immediately cease the activity. During the term of this Agreement, Contractor shall not enter into any activity described in paragraph "c" or which constitutes any other unacceptable conflict of interest.

Contractor shall immediately disclose to DNR the existence of any conflict of interest, including conflicts of interest which are described in paragraph "c" and are in progress when the term of this Agreement begins.

Notwithstanding the language of this section, Contractor may continue with and enter into new contracts with DNR.

SECTION 15. EXECUTION

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other goods and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Contract and have caused their duly authorized representatives to execute this Contract.

IOWA DEPARTMENT OF NATURAL RESOURCES

By: _____
Liz Christiansen, Deputy Director

Date: _____

Ayres Associates, Inc.

By: _____
Richard Otis, Senior Associate

Date: _____

This agreement was approved, as required by Subsection 455B.105(6) of the Code of Iowa, by the Environmental Protection Commission on March 5, 2007.